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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,799	08/17/2006	Johannes Gerardus M. Hendriks Van de Weem	2409-0162PUS1	3417
2292	7590	05/05/2009		
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER SINGH, KAVEL	
			ART UNIT 3651	PAPER NUMBER
			NOTIFICATION DATE 05/05/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Office Action Summary**

Application No.

10/584,799

Applicant(s)

HENDRIKS VAN DE WEEM,  
JOHANNES GERARDUS

Examiner

KAVEL P. SINGH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14, 16, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 14 and 16 recites the broad recitation of 2-6 seconds (claim 14) and 3,000-8,000 gimmicks (claim 16) and the claim also recites 4 seconds (claim 4) and 6,000 gimmicks (claim 16) which is the narrower statement of the range/limitation.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not understood what rang means in the claim language and not described in the specification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4-9,10,11, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Niederer U.S. Patent No. 3,316,688.

Claim 1, Niederer teaches a sliding table 2 having at least one free side where an operator can position himself (C2 L3-5 – any form of equipment referring to an operator as well), and with at least one conveyor (assembly with 4), the at least one conveyor being provided with compartments each having such dimensions that one gimmick (the eggs) is receivable therein, and wherein an inlet of the at least one conveyor 6 aligns with the sliding table Fig. 2.

Claim 2, Niederer teaches at least one conveyor (assembly of 4 continuing to 34) is a conveyor provided with projections (44,46 C3 L2-4), wherein a compartment is formed by the space between two successive projections Fig. 1.

Claims 4 and 19, Niederer teaches in the or each conveyor (assembly of 4), in the active, upwardly facing part, 8-15 compartments are situated Fig. 1.

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Claim 5, Niederer teaches downstream of the discharge end of the or each conveyor (assembly of 34) a receiving pocket 60,66 is provided in which a gimmick is receivable, the receiving pocket 60,66 being provided with delivery means which are arranged for delivering the gimmick from the pocket 60,66 to the conveyor line at a desired time C3 L35-40.

Claim 6, Niederer teaches the delivery means (via 64) comprise a bottom of the pocket which can be released C3 L35-37.

Claim 7, Niederer teaches the delivery means 64 comprise a pusher by means of which the gimmick (the egg) is actively pushed onto the conveyor line 34.

Claim 8, Niederer teaches the releasable bottom of the pocket 66,60 comprises a flexible diaphragm which opens automatically under the influence of the force exerted by the pusher on the gimmick Fig. 1.

Claims 9 and 10, Niederer teaches the apparatus is provided with a control, wherein adjacent the discharge end of the or each conveyor 4 a sensor 36 is disposed which is arranged for sensing the presence and/or absence of a gimmick (egg) in a compartment of the respective conveyor 4 situated near the discharge end, or, if present, in the receiving pocket 60,66 belonging to the respective conveyor 4/34, the control being arranged for driving the respective conveyor until said compartment 6 and/or the receiving pocket possibly present is filled with a gimmick, such that in each case a gimmick is ready for delivery Fig. 1 C5 L35-45.

Claim 11, Niederer teaches the apparatus is provided with a control, the control being

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connected to an encoder which produces signals that are indicative of the position of the main conveyor in the conveyor line C5 L35-45.

Claim 17, Niederer teaches the width of a compartment 6 is in the rang Fig. 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niederer U.S. Patent No. 3,316,688 in view of Antonissen U.S. Patent No. 5,209,339.

Claims 3 and 18, Niederer does not teach as Antonissen teaches a number of individual short conveyors located one behind the other and arranged with the drive of each conveyor being independently controlled so that upon the arrival of the first product of each group, the downstream short conveyor is stopped C4 L11-15; Niederer teaches at least four parallel conveyors Fig. 2 which would be obvious to one of ordinary skill to drive independently of each other in order to maintain conveyor flow.

Claim 20, Niederer teaches in the or each conveyor (assembly of 4), in the active, upwardly facing part, 8-15 compartments are situated Fig. 1.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Niederer U.S. Patent No. 3,316,688 in view of Eaves U.S. Patent No. 4,604,704.

Claim 12, Niederer does not teach as Eaves teaches the or each conveyor is provided with a warning light which bums when the conveyor starts to move or moves C20 L20-

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25. It would be obvious to one of ordinary skill to use a light as taught by Eaves into the invention of Niederer to allow the workers to know when the conveyor is moving for safety reasons.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niederer U.S. Patent No. 3,316,688.

Claim 13, Niederer teaches the conveyors 4,34 are driven intermittently, wherein the conveyors 4,34 at each driving event are moved forward at least one compartment, while a driving event occurs every 2-6 seconds, more particularly every 4 seconds, per conveyor (through the control device and switch C5 L35-45).

Claim 14, Niederer teaches belts 4 serve to move eggs into engagement with the egg-retarding members 18; and when a complete set, of say six eggs, are in position for transfer to the packing conveyor, the micro-switches 36 will be closed through conductors 38 and a circuit will be completed to energize motor 32, but is not adjustable, but would be obvious to one of ordinary skill to teaches the apparatus is provided with an adjusting button by means of which the time of delivery of a gimmick to the main conveyor is settable, such that the delivery position of the gimmick in the conveying direction of the main conveyor is settable in order to improve efficiency.

Claim 15, Niederer teaches at least the position of the discharge end of the at least one conveyor transverse to the conveying direction of the main conveyor Fig. 2, but would be obvious to one of ordinary skill to make it settable relative to the main conveyor in order to accommodate the necessary production.

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Claim 16, Niederer teaches the delivery capacity of the apparatus is in the range of 3,000-8, 000 gimmicks per hour, more particularly about 6,000 gimmicks per hour.

The recitation of the timing of the conveyor to the calculation of the production seems to be an obvious design choice and expedient in view of *Gardner v. TEC Systems Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984). The Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Kavel P. Singh whose telephone number is (571) 272-2362. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art  
Unit 3651

KPS